Case No: 3306690/2019

EMPLOYMENT TRIBUNALS

Claimant: Ms Grubic-Andvari

Respondent: Refugee Therapy Centre

Heard at: Watford Employment Tribunal and via CVP
On: 9, 10, 11, 12 and 13 November 2020

Before: Judge Bartlett, Mr Bhatti and Mr Sutton

Representation
Claimant: in person
Respondent: Ms Bann, solicitor

JUDGMENT

1. All claims of direct discrimination contrary to s13 of the Equality Act 2010 on the grounds of race fail.

2. All claims of victimisation contrary to s27 of the Equality Act 2010 fail.

3. The claim that the claimant was constructively unfairly dismissed fails.

4. By consent the claim that the claimant suffered unlawful deductions from wages and she was not paid annual leave contrary to the Working Time Regulations 1998 succeeds. The claimant is awarded the amount of £524.20 in respect of these claims.

REASONS

Introduction

5. The claimant was employed as a part-time administrative assistant by the respondent, a small registered charitable company limited by guarantee which ran a centre providing psychotherapy and counselling services to refugees and asylum seekers in London. Her employment lasted from 17 May 2017 until her resignation with effect from 7 December 2018. After a period of conciliation which lasted from 4 December 2018 to 4 January 2019, the claimant presented a claim form on 26 February 2019. A further issue of

postemployment victimisation was added at a preliminary hearing on 22 November 2019.

6. A further preliminary hearing took place on 4 September 2020 at which several of the claimant's claims were struck out and one claim was withdrawn. Case management orders were also made at this preliminary hearing.

The hearing

Application for postponement

7. On 2 November 2020 the claimant made an application for postponement of the full merits hearing. This application was refused on 4 November 2020 and the claimant was informed that she could repeat her application at the final hearing.

8. At the start of the final hearing the appellant repeated her application for a postponement. The reasons for the application were that the claimant suffered from anxiety and depression and she felt that it was impossible for her to proceed with the hearing. She also had not prepared for the case: she had not produced witness statements, prepared cross examination nor prepared her documents. In support of the application the claimant had submitted a not fit to work note and letter from her doctor which stated that the claimant had anxiety and that the claimant felt that she would be able to proceed with the case in a month's time. The documents from the doctor did not set out the claimant was unfit to attend or prepare for the hearing.

9. The tribunal told the claimant that it could make adjustments to the hearing such as breaks and giving her extra time or other adjustments which she would find useful. The claimant stated that no adjustments would be useful instead it was impossible for her to proceed.

10. The tribunal also asked the claimant what would be different if the hearing was delayed to a later date. Hearings are stressful events and could the level of anxiety she was feeling at the time be because she was facing a final hearing. The claimant stated that despite suffering from anxiety for a number of years she believe that in time it would go.

11. The claimant's application for postponement was rejected. The tribunal accepted that the claimant suffers from anxiety however the tribunal did not consider that an adjournment was in the interests of justice nor the overriding objective for the following reasons:

    11.1. The claimant was able to attend a PHR in September 2020 which took evidence and submissions on strike out applications. No difficulties with the claimant's participation were identified. The tribunal recognises that circumstances change and the claimant believed her anxiety now was greater than then;

    11.2. the claimant received the draft bundle from the respondent at the start of October 2020. The bundle initially ran to almost 170 pages (a small number of additional documents were added at the hearing from the claimant) approximately the first 75 pages of which were tribunal documents such as the ET1, ET3 and case management summaries. The

tribunal considers that this is not an overwhelming amount of documents even though it is substantial. In the weeks preceding the final hearing the claimant, even taking the documents a small number at a time, would been able to review them if she had chosen to do so. The tribunal recognises that the claimant's anxiety contributed to her actions not to review the documents in any detail however it does not accept that she would react differently if the hearing was adjourned;

11.3. by giving the claimant some time during the days scheduled for the hearing the claimant would be able to review necessary documents and prepare her case;

11.4. the events complained of by the claimant occurred almost 2 years before the date of this hearing. If the case were to be adjourned, it would be adjourned for many months and possibly even up to a year. It is trite to say that justice delayed is justice denied but resolution of the case is in the interests of all parties and elapsed time can damage the strength of evidence as memories fade and people move on;

11.5. the case was ready for a final hearing. The case management hearing on 4 September 2020 had substantially narrowed the issues that were to be determined and set out case management orders. The respondent had sent the bundle to the claimant in good time and in compliance with the orders been ready to exchange witness statements;

11.6. the hearing had been listed for five days and this had been decided when the list of issues was much greater than those which remained after the CMR in September 2020. The tribunal considered that there was sufficient time in the timetable to give the claimant the opportunity to prepare before the hearing continued and to give the claimant breaks and time to prepare during the course of the hearing;

11.7. the claimant represented herself and suffers from some mental ill-health. The tribunal is experienced in dealing with parties with those characteristics and is able to make adjustments to accommodate them.

How the hearing proceeded

12. There were various multifactional organisational issues that arose during the course of the hearing which led to some parts of it are being carried out in person and other parts being carried out via CVP. Below is a summary of how the hearing took place and the reasons why:

12.1. the first day commenced shortly before 11 AM due to commitments of the tribunal panel;

12.2. after the postponement application was decided and housekeeping issues were discussed the first day ended at approximately 12:30. This was so that the claimant was given approximately 24 hours to prepare her witness statements and documents;

12.3. the tribunal service copied the bundle and gave a copy to the claimant before she left the tribunal premises on the first day so that she had it and was able to prepare;

12.4. the respondent sent through electronic copies of its witness statements immediately after proceedings on the first day ended. The claimant had previously agreed that she could access word attachments to emails;

12.5. the second day commenced at 12 AM. There was some discussion of housekeeping issues. The claimant had electronically sent her witness statements early in the morning of the second day. She had brought a number of additional documents most of which were included in the bundle. Several documents were excluded because they were irrelevant to the issues;

12.6. in the afternoon of the second day and the morning of the third day the respondent called its witnesses. The tribunal gave the claimant a choice as to whose witnesses were to go first and she preferred the respondent's to go first. This was agreed on the first day so that the claimant had time to prepare cross-examination;

12.7. the respondent's first witness was Dr Aida Alayarian. She was in Portugal and her evidence was taken via CVP. The claimant did not object to this and there were no problems with connection or communication;

12.8. it was agreed on the first day that another of the respondent's witnesses Mr Ariyan would give evidence via CVP. This is because he had informed the respondent's representative that he was ill with symptoms which included a fever. The claimant had wished for Mr Ariyan to attend the hearing in person however the tribunal decided that given Mr Ariyan had a fever which was a symptom of Covid-19 and the country was under a second period of lockdown it was fair and in the interests of justice for him to give his evidence via CVP. Again there were no issues with communication or the connection;

12.9. on the evening of the second day a member of Judge Bartlett's family became ill with a high fever. As a result a Covid-19 test was taken early on the third day. These circumstances required Judge Bartlett to self isolate and the third day proceeded with Judge Bartlett participating via CVP. All other parties were present in the tribunal room at Watford;

12.10. on the first and second days it had been agreed that the third day would end at 2:15pm due to a commitment of the tribunal. By the time of the third day this commitment had been cleared and the tribunal were able to continue past this time. However, quite understandably, Ms Bann had made other arrangements and could not stay much longer than 2:30pm. Given that the evidence stage had finished around 13:30pm on the third day and it was evident that the claimant needed a substantial break before she would be able to continue with the hearing it was agreed that the hearing would reconvene on the fourth day. It also gave the claimant further time to prepare her submissions;

12.11. as submissions were the only part of the proceedings that the claimant and respondent needed to attend and it was expected that these would take approximately one hour, Ms Bann requested that these be carried out via CVP. This was because Ms Bann had a journey of several hours to the tribunal and she felt that undertaking this journey during the

lockdown to attend the tribunal for approximately one hour was unreasonable in terms of risk exposure. The claimant stated that it would be impossible for her to make her submissions via CVP. Therefore it was decided that Ms Bann alone would present submissions via CVP and everyone else would attend the Watford tribunal in person. Judge Bartlett would attend in person or via CVP depending on herself isolation obligations. The claimant did not raise any objection to these arrangements;

12.12. during the course of the afternoon and evening of the third day after the conclusion of proceedings it was determined, by parties separate to the tribunal panel, that because of the self isolation arising from potential Covid-19 exposure the entire hearing had to be converted to CVP. The parties were notified of this during the evening of the third day;

12.13. during the morning of the fourth day the Covid-19 test result of Judge Bartlett's family member had come back negative. However communications had been sent to the parties about the total conversion to a CVP and the delayed start time of the hearing as a result of a delay in couriering the papers to the panel members;

12.14. during the morning of the fourth day the claimant stated that she wished to attend the tribunal in person even if no one else could. Arrangements began to be put in place so that the claimant could attend the Watford tribunal and participate via CVP from there. However shortly thereafter the claimant communicated that she felt unwell, weak and had a cough. As a result, HMCTS determined that she had communicated that she was suffering from a potential Covid-19 symptom and she was not permitted to attend the Watford tribunal. Judge Bartlett gave instructions for the hearing to commence at 1 PM via CVP and for the hours before then to be used to try to assist the claimant in accessing CVP so that an assessment could be made at 1 PM if this was a viable means of carrying on with the hearing;

12.15. there was some delay in the commencement of the CVP hearing on the fourth day due to connection problems with one of the tribunal members however at approximately 1:30 PM the hearing commenced. Checks were made with the claimant that she was comfortable using CVP and that she was well enough to participate in the hearing. She confirmed that she was on all counts;

12.16. the hearing proceeded via CVP on the third day. There were some connection problems with Mr Bhatti and on two occasions the claimant lost connection. However the proceedings were able to continue via CVP by taking breaks and resolving these issues. The claimant was able to participate fully in the CVP, she had a good computer set up and could be seen and heard clearly;

12.17. judgement was reserved.

The issues

13. The issues in this case were significantly limited following a preliminary hearing on 4 September 2020. The issues that went forward to the final

hearing were set out in a list of issues which the respondent had provided as a result of directions arising from the September preliminary hearing:

13.1. S13 Direct Discrimination on Grounds of Race

1. The claimant alleged the respondent engaged in the following conduct:

a) The initiation of the investigation into L.S.'s complaint;
b) The conduct of that investigation;
c) The conclusion of that investigation by 24 October 2018;
d) On or by 24 October 2018- The criticism by Ms Golbandi-Nazid of the way the claimant wrote her signature in Farsi and/or recording such criticism of L.S. in Ms Golbandi-Nazid's record of the investigation?

13.2. Equality Act, section 27: victimisation during employment

13.2.1. The claimant relies on the following protected acts:

13.2.1.1. Her email of 15 December 2017;
13.2.1.2. Her conversation with then CEO Robin Snook of 25 May 2018
13.2.1.3. Email complaint of 31 October 2018
13.2.1.4. Email complaint of 5 November 2018

13.2.2. The Claimant alleged that she was subjected to the following treatment by the respondent as a result of doing the protected acts:

13.2.2.1. Deciding to make the claimant redundant with effect from 14 December 2018 and notifying her of that on 31 October 2018.

13.3. Equality Act 2010 section 27 Victimisation- post employment

13.3.1. The C relies on the above protected acts in 2a above plus the submission of her ET1;

13.3.2. The Claimant alleges that she was subjected to the following treatment by the Respondent as a result of doing the above protected acts:

13.3.2.1. Ms Alayarian approaching the claimant's partner and 3 common friends to seek to resolve the proceedings when she had been expressly told not to do through the respondent's solicitor.

13.4. Constructive dismissal

13.4.1. Was the Claimant constructively unfairly dismissed within the meaning of s 39(7)(b) EA 2010 and was that an act of discrimination contrary to s39(2)(c) or victimisation contrary to s 39(3)(c). The claim is that she resigned in response to the alleged unlawful acts set out above individually and in combination.

13.5. Unpaid Annual leave- Working Time Regulations

13.5.1. The claimant alleged that the respondent failed to pay the claimant's statutory holiday pay at the time the claimant resigned on 7

December 2018. She claims she is owed 4 days pay.

13.6. Unauthorised deductions

13.6.1. Parties agree that the R failed to pay national living wage for part of the C employment and that she is owed £120.96 gross.
13.6.2. Claimant claims a further 1 days salary for December 2019, which she claims was unpaid.

14. The respondent accepted that it had failed to pay annual leave to the claimant and it had made unauthorised deduction from wages. By consent it was agreed that the sums which had not been paid to the claimant amounted to £524.20.

The evidence

15. The tribunal heard witness evidence from the following individuals:

15.1. Dr Aida Alayarian, via CVP;
15.2. Mr Ariyan, via CVP
15.3. Mr Jalali;
15.4. Mr Rahmani
15.5. Mr Sadrollah Andvari;
15.6. The claimant;

The law

Constructive dismissal

16. Unfair Constructive Dismissal pursuant to section 95(1)(c) of the Employment Rights Act 1996;

16.1. Did the Respondent commit an act or series of act which cumulatively amounted to a breach of the implied term of trust and confidence?

16.1.1. If there was a series of cumulative acts, what was the last straw?
16.1.2. Did the Claimant resign in response to that breach?
16.1.3. Did the Claimant delay too long before resigning?

16.2. Was there a fair reason for the dismissal?

17. S13 EqA Direct Discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

18. S27 EqA Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a)B does a protected act, or

(b)A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a)bringing proceedings under this Act;

(b)giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

Burden of Proof Discrimination

19. s136 of the EqA Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

20. In **Igen Ltd v Wong** the Court of Appeal approved the guidance given in **Barton v Investec Securities Ltd [2003] IRLR 33**2 concerning the burden of proof in discrimination cases which is that:

"(1) Pursuant to s 63A of the SDA 1975, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s 41 or s 42 of the SDA 1975 is to be treated as having been committed against the claimant. These are referred to below as "such facts".

(2) If the claimant does not prove such facts he or she will fail….

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive."

Decision

S13 EqA direct discrimination

21. The facts relating to the direct discrimination claim were largely undisputed. The relevant facts are as follows:

21.1. a client of the respondent made a complaint in May 2018. This complaint concerned the claimant informing the client that children could not be self referred to the respondent and instead a referral was needed from social services or a GP. However the client had been informed by Dr Alayarian that this was not the case;

21.2. the original letter of complaint has been lost and has not been located by either party;

21.3. the then CEO of the respondent, Mr Snook, met with the claimant on 30 May 2018 to discuss the complaint with her. This meeting was covertly recorded by the claimant;

21.4. Mr Snook wrote to the client on 5 June 2018 stating that the respondent would "*investigate all aspects of our processes, procedures, responsiveness to enquiries in the conduct in this instance...*"

21.5. Mr Snook resigned on 1 June 2018 and before he left he did not take any further actions in relation to the complaint;

21.6. Mr Snook did not inform the trustees about the complaint and no further action was taken by the respondent until the client raised the issue with her therapist at the respondent who raised it with the manager who then notified the trustees;

21.7. at a board meeting on 18 October 2018 it was decided that Dr Golbani-Nazif would handle the complaint;

21.8. Dr Golbani-Nazif met with the client on 24 October 2018 and a note of the meeting was made by her;

21.9. the note of the meeting was given to the claimant by Dr Golbani-Nazif shortly after it took place;

21.10. The meeting notes made by Dr Golbani-Nazif included, amongst other statements, *"[the client] believes that [the claimant's] behaviour has been dismissive, highly disrespectful, undermining. [The claimant's] signature in Farsi written spaciously is interpreted as undignified and off putting*";

21.11. a written response to the client complaint was sent to the client on or around 25 October 2018. No party could identify an exact date on which the response was sent;

21.12. regrettably the respondent's response to the client was not provided by either party. By the time of submissions Ms Bann had obtained a copy for herself and she read it out. The claimant did not dispute that any of

what was read out was not included in the letter. The relevant part was "*Some confusion among newly joined staff at the time*". In the claimant's witness statement she said that that letter had contained the following phrase "*confusion amongst the newly joined administration staff.*" The claimant found the phrase as she used it in her witness statement to be deeply offensive as she considered that it indicated that she had done something wrong;

22. To the extent that any of the following facts are disputed we make the following findings of fact:

22.1. the respondent did not blame the claimant in anyway or at anytime for any of the events or actions identified by the complaining client. To the contrary the respondent identified that there was a failure of communication as to the correct process at levels above the claimant and that the claimant had only said what she had been instructed to do so. This was not disputed by the claimant but even if it had been the claimant did not identify any adverse treatment she had suffered and the tribunal accepted Dr Alayarian's evidence that this was the case. She identified where the miscommunication within the respondent staff had arisen (which was not at the claimant's level) and how the respondent had taken steps to ensure that the correct procedure was known by staff;

22.2. the handling of the client complaint was reasonable in all the circumstances. The respondent sent a holding letter to the client and Mr Snook spoke to the claimant about the matter. Unfortunately an investigation was not pursued promptly as a result of the departure of Mr Snook. When the respondent's attention was drawn to the complaint by the client in October 2018 the respondent appointed an individual (Dr Golbani-Nazif) who had no knowledge of the claimant and therefore could fairly be said to be independent. Dr Golbani-Nazif carried out a reasonable and fair investigation into the complaint by meeting with the client and recording the client's complaints, a letter of apology was issued to the client which stated that there was "*some confusion among newly joined staff at the time*.";

22.3. the claimant found the apology given to the client to be extremely offensive to her. Further, the client complaint itself and the apology seems to have caused her great distress. The tribunal finds that the letter of apology from the respondent was a reasonable response to a complaint: it acknowledged that the respondent and not the claimant had made an error and made an apology. This is a sensible and pragmatic response which almost all organisations would adopt. The claimant took great offence at the apology and instead appears to have desired that the respondent denied any errors and refuted that there were any grounds for any complaint whatsoever. The tribunal finds that this would be an unreasonable way to respond to complaints by an organisation. Complaints by members of the public in all professions and all situations are very common these days and one of the easiest ways of dealing with the complaint is to apologise. The phrase the "customer is always right" is one that many organisations adopt in relation to complaints.

Comparators

23. The tribunal has proceeded on the basis that the comparator is Ms Davenlou and/or a hypothetical comparator who does not share the protected characteristic of not being of Iranian origin. It is noted that Ms Davenlou is of Iranian origin.

Less favourable treatment

24. The tribunal finds that there has not been any less favourable treatment of the claimant in relation to the four points identified in the grounds of claim:

25. There was no evidence that any complaint had been made against Ms Davnenlou and that she had been treated differently to the claimant.

26. Using a hypothetical comparator the tribunal does not accept that a hypothetical comparator would have been treated differently in any way to the claimant for the following reasons:

26.1. in relation to the initiation of the investigation into the client's complaint, the tribunal finds that the respondent initiating an investigation into a client complaint is reasonable, sensible and entirely untainted by race discrimination;

26.2. as above the tribunal finds that the investigation was conducted reasonably and it was fair. The tribunal finds that the conduct of the investigation was entirely untainted by race discrimination. The claimant did not agree with how the investigation was carried out: she wanted to have a meeting as part of the investigation and her side of the story be taken. She considers that this would have been parity of treatment. However it is not disputed that Mr Snook met with the claimant in June 2018 and the tribunal finds that the issues the client complained about could be investigated with little input from the claimant. The claimant seems to consider that she should have been permitted to give her side of the story as if it were a disciplinary investigation or a precursor to that. However this forgets the fact that this was a client complaint about the respondent that resulted in no criticism of the claimant whatsoever, she was not investigated, no conduct issues were raised and no disciplinary was mooted;

26.3. the tribunal recognises that there was a delay in the investigation of a number of months but finds that this arose because of the poor communication from Mr Snook and that there was no connection whatsoever between the claimant's race and the delay;

26.4. the tribunal finds that the conclusion of the investigation by 24 October 2018 is not tainted by discrimination on the grounds of race in anyway whatsoever. The respondent issued an apology: it did not criticise the claimant and it did not name the claimant. This was a reasonable and sensible way of trying to placate a client and prevent escalation of the complaint. The tribunal recognises that there was some potential dispute about whether the response to the complaint referred to newly appointed or newly appointed administrative staff. The claimant put forward the latter. However the tribunal has decided that it was the former this is because even though we did not have the letter before us Ms Bann read out the letter during the course of submissions. Ms Bann is a solicitor and

she owes professional obligations to the tribunal. Therefore given that no party provided us with a copy of the letter we prefer to rely on the words that Ms Bann read out. In any event we consider that little turns on which formulation of the words was used because the claimant was still not identified and neither was she criticised. For completeness we record that we recognise that the legal issue we must consider is not whether the respondent's actions were reasonable rather it is whether or not they had any connection whatsoever with the claimant's race.

26.5. We find that the 4th alleged act of direct discrimination, namely the criticisms of the claimant's signature by the client in the meeting notes of Dr Golbani-Nazif, is misconceived. This is because the tribunal finds that the note taken by Dr Golbani-Nazif records what the client said and the criticism of the claimant's signature was made by the client and not by the respondent. Judge Bartlett put this point to the claimant during submissions and she accepted it and stated that her issue was that the client's complaint about her signature had been recorded in the minutes. The tribunal rejects the assertion that this could be an act of discrimination on the grounds of race. The meeting notes were simply to record what the client said they do not represent a criticism by the respondent of the claimant. It is absurd to suggest that the note should have been edited to exclude statements from the client which may have offended the claimant.

27. For all of these reasons we find that the claims of direct discrimination on the grounds of race must fail.

S27 EqA victimisation during employment

Protected Acts

28. The tribunal finds that the claimant's email of 15 December 2017 was not a protected act. It makes reference to "preferential treatment" but there is no mention of discrimination or race. Therefore it cannot be a protected act.

29. The tribunal finds that the transcript of the meeting between the claimant and Mr Snook of 25 May 2018 records that the claimant says she has suffered discrimination and therefore this is a protected act.

30. The tribunal finds that the claimant's email complaint of 31 October 2018 states that "the centre has shown scant regard for the Equality Act" and this is a protected act.

31. The tribunal finds that the claimant's email complaint of 5 November 2018 refers to racial harassment and racial prejudice and is a protected act.

Was the claimant subject to a detriment as a result of doing the protected act(s). The alleged detriment is deciding to make the claimant redundant with effect from 14 December 2018 and notifying her of that on 31 October 2018.

32. The tribunal finds that there is no connection whatsoever between the three protected acts and the decision to make the claimant redundant and notification of that decision.

33. The tribunal finds that the centre at which the claimant worked was closed in December 2018 and it has remained closed since that date. The claimant refused to accept that the centre was closed for the following reasons:

    33.1. therapists due to their professional obligations have to continue sessions with clients and therefore the claimant believed that only she was affected by the redundancy;

    33.2. she was copied into an email chain with the therapists and Dr Alayarian who attempted to set up a meeting in January 2019. This meeting did not take place but there were efforts to arrange another meeting. However the claimant did not know if there was another meeting;

    33.3. a letter from a former trustee Lennox Thomas set out that previously Dr Alayarian had tried to close the centre to avoid difficulties with the staff.

34. The minutes of the trustee meeting on 18 October 2018 set out a discussion on the future of the respondent and the ongoing problems. These included but were not limited to difficulty between staff groups, intense and ongoing tension between the staff members and trustees, more staff were needed and those staff such as the CEO found the management of staff impossible, retention of staff and the low number of applicants or no applicants for jobs that are advertised and a shortage of trustee members.

35. Mr Snook's letter to the trustees dated June 2018 summarised the main drivers for his resignation including:

    35.1. continued infighting and hostility amongst members of staff and aversion to team working;

    35.2. the departure of the newly recruited financial controller following his concerns about past financial accounting practices;

    35.3. strained relationships amongst the board;

    35.4. his perception of a greater need for investment in strengthening clinical management and day-to-day operations.

36. The claimant accepted in her evidence that other employees were given notice of redundancy and made redundant at the same time as her. She also accepted that some of the therapists were self-employed and we find that some of the therapists were volunteers. The tribunal finds that the fact that some therapists may have continued to see clients due to their professional duties does not prevent there having been a genuine redundancy situation in relation to the centre.

37. The Tribunal finds that there is considerable overlap between the concerns identified by Mr Snook in June 2018 and the reasons identified for the closure of the centre in October 2018. The tribunal recognises that there is some reference to staff problems however this is an overarching theme at all levels within the organisation and there is no discernible linked to the claimant in particular or the protected acts. This evidence establishes that the reasons for the redundancy were substantial, long term and independent of the claimant.

38. The tribunal therefore finds that the claimant's redundancy was made for genuine reasons unrelated to the claimant or the protected acts. Therefore the claimant's claim to have suffered victimisation during employment must fail.

S27 EqA victimisation post employment

Protected Acts

39. The findings set out above in relation to protected acts are repeated here. In addition the claimant relies on the submission of her ET1 as a protected act The tribunal accepts that that is a protected act.

Was the claimant subject to a detriment as a result of doing any or all of the protected acts. The detriment relied on is Dr Alayarian approaching the claimant's partner and three common friends to seek to resolve the proceedings when she had been expressly told not to do so through the respondent solicitor.

40. The respondent accepted that in an email of 27 August 2019 the claimant wrote to the respondent's solicitor and asked her to tell her client to refrain from discussing a confidential matter. Therefore it is this date that is taken as the date after which the detriment is alleged to have taken place.

41. It was not disputed that Dr Alayarian contacted the claimant's husband several times in 2019 including on 15 June 2019. The tribunal accepts the transcript of the text messages provided by the claimant which sets out that Dr Alayarian texted to the claimant's husband "*at the moment, I am mourning the loss of a close friend, but I have to sort out the centre's problem and get over it. I just wish we could have a conversation, if you like, to sort out the problems, as much as we can. If you don't wish, please let me know. I would accept it.*"

42. The Tribunal finds the following:

    42.1. the record of the text messages show that the claimant's husband and Dr Alayarian went on to attempt to meet up on 19 June 2019 but were unable to do so because Dr Alayarian was in hospital. On 15 July 2019 Dr Alayarian asked to meet up with the claimant's husband and on the 23rd he declined stating that it would be better if the claimant was contacted directly or via ACAS because he did not have a comprehensive knowledge of the ongoing issues. This was accepted by Dr Alayarian on 25 July 2019.

    42.2. A review of the timeframe establishes that all of the contact between Dr Alayarian and the claimant's husband took place prior to 27 August 2019.

43. Therefore these acts cannot fall within the scope of the claimant's allegation and this part of the claim must fail. For completeness we record that there was no evidence before us that there had been any communication about the proceedings prior to the submission of the ET1 and therefore only this protected act could possibly have any connection to the detriment alleged by the claimant.

44. In relation to Dr Alayarian approaching three common friends Mr Rahmani, Mr Jalali and Mr Ariyan, the tribunal makes the following findings:

    44.1. it was not disputed that these three individuals did approach the claimant's

husband to try to seek resolution of the dispute between the claimant and the respondent;

44.2. as background we note that these three individuals had been friends with the claimant's husband for approximately 30 to 25 years. They met up regularly as part of a friendship group which discussed politics and related matters;

44.3. the three individuals spoke frankly and forcefully with the claimant's husband about their unfavourable opinion about the claimant pursuing employment tribunal proceedings against the centre and their belief that this would reflect unfavourably on the claimant's husband who like them was, as they stated a well-known, political activist;

44.4. the three individuals' views were expressed very forcefully and they used emotive language. However the tribunal finds that this type of language and the force of it was the sort used by those individuals, the claimant's husband and their friendship group in their regular meet ups about political and related issues. The language they used was common to them and in the context of their discussions the impact of it on the claimant's husband and in turn the claimant would have been limited due to their familiarity with it;

44.5. there are substantial links between the respondent and the part of the Iranian diaspora in which the claimant's husband and the three friends lived. Mr Rahmani's wife was a trustee of the centre from April 2019, he stated that he had been asked for a donation to the centre and that he had given donations on several occasions. Dr Alayarian had connections to these individuals through the Iranian community and she herself was of Armenian descent who had been an Iranian national;

44.6. the three individuals felt protective of the respondent and the work that it did;

44.7. all three individuals denied being informed about the Employment Tribunal claim by Dr Alayarian. This was contrary to the evidence of Mr Andvari who stated that they had all told home that Aida had told them about the claim. The tribunal prefers the evidence of the 3 individuals and Dr Alayarian. Having seen Mr Rahmani, Mr Ariyan and Mr Jalali give evidence the tribunal accepted the statement in Dr Alayarian's statement that these were "intelligent, independent thinking, intellectual Middle Eastern men" over whom she did not have power. The Tribunal fnds that Dr Alayarian did not approach Mr Rahmani, Mr Ariyan and/or Mr Jalali to seek to resolve proceedings at any time.

45. Taking all of the evidence into account the tribunal finds that the claimant has not established to the standard of proof that the alleged detriment occurred and her claim of post employment victimisation fails.

Constructive dismissal

46. As the tribunal has found that the claimant has not suffered discrimination and has not been victimised the claimant cannot establish that there was a fundamental breach of a term of the contract of employment which entitled her

to resign. Therefore the claimant's claim for constructive unfair dismissal fails.

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Employment Judge **Bartlett**

Date_17 November 2020__

JUDGMENT SENT TO THE PARTIES ON

.....1/12/20.....

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FOR THE TRIBUNAL OFFICE

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The claimant's husband and Dr a